

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Whole Woman's Health, et al.,

Plaintiffs,

v.

Austin Reeve Jackson, et al.,

Defendants.

Case No. 1:21-cv-00616-RP

**DEFENDANT MARK LEE DICKSON'S MOTION TO STRIKE
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION FOR
VIOLATING LOCAL RULE 7(c)(2)**

The rules of this Court limit a motion for preliminary injunction to 20 pages. *See* Local Rule 7(c)(2). On August 7, 2021, the plaintiffs filed a motion for preliminary injunction that is eight pages long. *See* Pls.' Mot. for Prelim. Inj., ECF No. 53. But this motion does not present an argument for how this Court could assert subject-matter jurisdiction over the plaintiffs' claims. *See id.* at 4. Instead, the motion purports to "incorporate by reference the[] forthcoming opposition to Defendants' motions to dismiss, which will make clear that the Court has subject-matter jurisdiction over this action." *Id.* On August 11, 2021, the plaintiffs filed three separate briefs opposing the defendants' motions to dismiss for lack of subject-matter jurisdiction, which came in at 20, 19, and 36 pages in length. *See* ECF Nos. 56, 57, and 62.

The motion for preliminary injunction also fails to present an argument for how the plaintiffs are likely to succeed on the merits of their claims. *See* Pls.' Mot. for Prelim. Inj., ECF No. 53 at 4. Instead, it purports to incorporate a 50-page motion for summary judgment that was filed on July 13, 2021. *See id.*

The plaintiffs have used these incorporation-by-reference maneuvers to give themselves 133 pages of preliminary-injunction briefing: 8 pages for the original motion, plus 50 pages for the incorporated summary-judgment brief, plus 75 pages for their three briefs in opposition to the defendants' Rule 12(b)(1) motions. The plaintiffs have done this without seeking leave of court to exceed the 20-page limit in Rule 7(c)(2). And they have done this without conferring with the defendants on whether we would agree to any of this.

Litigants are not permitted to circumvent word limits by incorporating other briefs by reference. *See Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 815–16 (3d Cir. 2016) (allowing parties to incorporate other briefs by reference “would effectively nullify the page or word limits imposed by the appellate and local rules.”). The plaintiffs must seek leave of court if they wish to incorporate briefs that will push their motion for preliminary injunction beyond the 20-page limit. And they must confer with the defendants before doing so.

The Court should strike the motion for preliminary injunction that the plaintiffs filed on August 7, 2021, and it should instruct the plaintiffs to submit a new motion that complies with Rule 7(c)(2). If the plaintiffs believe that they need more than 20 pages to present their arguments for a preliminary injunction, then they must seek leave of court to exceed the page limits after conferring with the defendants. They do not get to help themselves to 133 pages of preliminary-injunction briefing by incorporating other briefs by reference—and they cannot use this maneuver to force the defendants to respond to 133 pages of briefing at the hearing set for August 30.

CONCLUSION

The Court should strike the plaintiffs' motion for preliminary injunction for violating Rule 7(c)(2).

Respectfully submitted.

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Dated: August 16, 2021

Counsel for Defendant
Mark Lee Dickson

CERTIFICATE OF CONFERENCE

I certify that I conferred with Marc Hearn, counsel for the plaintiffs, and he informed me that the plaintiffs oppose this motion.

/s/ Jonathan F. Mitchell
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CERTIFICATE OF SERVICE

I certify that on August 16, 2021, I served this document by CM/ECF upon:

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